Appellate Case No. 47230-9-II

COURT OF APPEALS

DIVISION II

OF THE STATE OF WASHINGTON

In re the Marriage of

Christopher Riehle, Appellant

And

Paula Murphy (aka Riehle), Respondent

REPLY BRIEF OF APPELLANT

Christopher Riehle
Pro Se
65382 E. Timberline Dr.
Rhododendron, OR 97049
(971) 204-2123

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I. ARGUMENT

Respondent's argument is mostly based on the fact that Appellant failed to keep his address updated with the Kitsap County Court. This fact was and has been admitted by Appellant and clearly falls within the requirements of the second part of the four part test for vacating default judgments, which states, "(2) that the moving party's failure to timely appear in the action, and answer the opponent's claim, was occasioned by mistake, inadvertence, surprise or excusable neglect". *White*, 73 Wash.2d at 352, 438 P.2d 581. The remaining parts are also clearly met by Appellate as detailed in the opening brief.

Respondent would like the court to toss out the well-argued case law governing due process in favor of a statutory requirement to keep an address updated with the Court. However, due process requires more than just placing a document in the mail to an "invalid address" as in this case. Per *In Marriage of McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997), the court held that due process requires notice that is "reasonably calculated under all circumstances to apprise a party of the pendency of the action and provide an opportunity to be heard." Furthermore, *Morin v. Burris*, 106 WA 2d 745, 161 P.3d 956 (2007) vacated a default order because of "failure to disclose the fact that the case had been filed and that a default judgment was pending when the Johnsons' claim representative

was calling and trying to resolve matters, and at a time when the time for filing an appearance was running, appears to be an inequitable attempt to conceal the existence of the litigation." In Appellant's case, both the respondent and her attorney had the means to contact Appellant anytime via email, phone, or contact the Division of Child Support for his current address – if they did not actually have a current address, which was shared with Respondent during visitation planning (CP 76-147)(CP 116-118). They chose not to, which amounts to an intentional act to keep the Appellant from knowing about the modification process. However, Respondent goes to the opposite extreme claiming that because Appellant failed to update his address and moved twice it "amounts to Appellant's frustration of service." *Respondent's Brief, pg. 5.*

What Respondent fails to defend or respond to speaks much louder than the defense, which conflicts with current ruling case law in both the Washington Supreme Court and the US Federal Courts.

For example, Appellant declared under penalty of perjury that he was reachable via email, phone, and current mailing address (Respondent's attorney had access to Appellant's current address through either the Division of Child Support or through Respondent) (CP 76-147). Respondent offers no evidence that they fulfilled due process requirements per *In Marriage of McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997), which states a requirement that notice must be

"reasonably calculated under all circumstances to apprise a party of the pendency of the action and provide an opportunity to be heard." Per Washington State Case Law, this is enough to vacate the default judgment, but there is more to the story. Appellant contacted Respondent shortly before she filed for a modification because he wanted to modify the child support order (CP 76-147). This fact is not disputed by Respondent. Neither is the fact that Appellant submitted for a modification with the Washington State Child Support Division (which was denied due to deviations) after Respondent refused to modify it voluntarily. Neither Respondent nor her attorney dispute the fact that they had Appellant's email address and have had past correspondence.

Respondent's attorney disputes who drafted the April 2011 child support paperwork; although it makes no difference in this case and he is, in fact, incorrect – Appellant did not draft the paperwork, he merely presented it. Neither Respondent nor her attorney dispute the fact that the correct address was on Appellant's attorney's "Notice of Withdrawal".

Respondent makes an argument that Appellant did not introduce evidence for various reasons; but again, he is incorrect. Appellant does provide evidence while other evidence is readily available and discussed publicly by most news agencies.

Respondent claims Appellant provided no evidence as to whether or not he was underemployed or voluntarily unemployed. This is untrue. Appellant filed

more than one Declaration and attached supporting documentation as to his income level and income earning potential (CP 154-160); historic evidence is also readily available as part of the April 2011 child support order. Furthermore, since the greatest recession since the Great Depression enveloped the United States, it is not unreasonable to believe or think that Appellant was impacted by this economic downturn like millions of other Americans. What is even more important to note is that Respondent has to show that Appellant is underemployed or voluntarily unemployed before imputed income can be used per RCW 26.19.071(6). In this case, the historic data as to Appellant's earning potential was already in evidence as part of the previous child support order. Respondent offered no new evidence to contradict or modify that order. Respondent offered no case law or even mentioned RCW 26.19.017(6) requirements for using imputed income. *In re Marriage of McCausland.* 159 Wn.2d 607, 611, 152 P.3d 1013 (2007)." See *Bevan v. Meyers*, Wn. App. ,334 P.3d 39, 44 (2014). Respondent offers no case law, evidence, or statutes that support interpreting Appellant's proof of income and earning potential as evidence of Appellant allegedly being voluntarily underemployed or unemployed.

Respondent claims Appellant provides no evidence that he kept the Division of Child Support apprised of his current address, which is untrue. Appellant stipulates within sworn declarations that he kept the Division of Child Support apprised with his current address (CP 76-147). Respondent offers no proof to

show otherwise. Nor does Respondent offer any evidence that the Division of Child Support was contacted to get Appellant's current address, which would be a natural place to check given the nature of the proceeding.

Respondent claims that Appellant offered no evidence of filing a forward notice with the United States Postal Service. Appellant certainly had all of his mail forwarded from his previous address (CP 76-147); however, this fact does not matter in this case, because Respondent did not mail the Modification documents to a "valid" address. The documents were mailed to an address that did not and does not exist (CP 21).

Respondent claims Appellant did not notify the "appropriate entities" when he moved. Again, this is not a true statement. Appellant did fail to notify the court, but he did not fail to notify the Respondent, the Division of Child Support, nor the United States Postal Service (CP 76-147).

Respondent's attorney is quick to point out that Appellant has been Pro Se in the past and should know the requirements of the court. However, Respondent's attorney does not want to be held to the same standard as even a Pro Se litigant; he wants to shrug off due process requirements and ruling case law in order to benefit Respondent by pushing through a default judgment that is manifestly unjust and based on an imputed income without any supporting evidence whatsoever.

Respondent's attorney points out that the child support order has bold print regarding address change. Appellant does not dispute this fact, but would like to point out that this particular document is only reviewed on rare occasions if at all by parties and does not truly offer any support to Respondent's argument. However, Respondent has a practicing attorney, and he certainly is or should be aware of ruling case law, especially when it pertains to "due process" and "imputed income" requirements.

Respondent points out that the trial court did not find Respondent had made a mistake by mailing the modification documents to an invalid address, which was never really an issue presented. However, Respondent fails to dispute that Appellant made an excusable mistake by failing to update one entity (Kitsap County Court) with a change of address (CP 76-147).

Respondent argues that Appellant did not act with due diligence to move to vacate the default order. However, the record clearly shows that Appellant acted immediately after discovering the existence of the default child modification order and the hearing to vacate was heard within one year of the entry of the default order (CP 76-147).

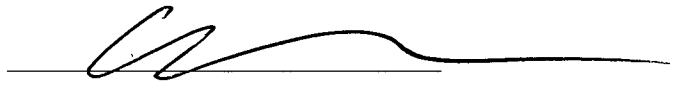
II. CONCLUSION

Respondent violated Due Process because her action was not "reasonably calculated under all circumstances to apprise a party of the pendency of the action and provide an opportunity to be heard." See *In Marriage of McLean*, 132 Wn.2d 301, 937 P.2d 602 (1997).

Respondent imputed income without satisfying the statutory requirements of RCW 26.19.071(6) and the court's ruling in *Bevan v. Meyers*, Wn. App. ,334 P.3d 39, 44 (2014). An income was imputed that conflicts with the court records before this proceeding and with the current court records that are part of this proceeding.

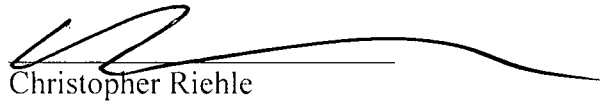
Appellant asks this court to overturn the trial court's decision and vacate the Default Child Modification Order of February 2014 and order the overpayment of support since the Default Order was entered to be credited to Appellant toward future child support obligations.

Appellant requests attorney's fees just for the trial court portion (CP 195-197)

I, Christopher Riehle, Declare Under Penalty of Perjury that and the information contained within this document are true and correct to the best of my knowledge. 

Christopher Riehle Dated October 15, 2015

Respectfully Submitted by,



Christopher Riehle
Pro Se
65382 E. Timberline Dr.
Rhododendron, OR 97049
971-204-2123

Court of Appeals of Washington State
Division II

Christopher Riehle	)	Kitsap County No. 07-3-00730-5
Petitioner	)	Court of Appeals No. 47230-9-II
v.	)	**Declaration of Service (U.S. Mail)**
Paula Murphy)		
Respondent	)	

I, Torii Rom, declare that I am over 18, and placed the following documents, including this Declaration of Service regarding the above-stated case, in the United States Mail, to the following addressee's listed below:

Appellant's Reply Brief -- Motion on Merits -- Motion to Stay

Washington State Court of Appeals - -
950 Broadway, Ste 300
Tacoma, WA 98402-4454

Todd Buskirk
3256 Chico Way NW
Bremerton, WA 98312-1322

Torii Rom

10/16/15

Torii Rom
Date Signed

65382 E. Timberline Dr.
Rhododendron, OR 97049
971.204.2123